

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERISA MOORE,

Plaintiff,

-v-

EXPERIAN, EQUIFAX, and TRANSUNION,

Defendants.

CIVIL ACTION NO.: 23 Civ. 673 (PAE) (SLC)

ORDER

SARAH L. CAVE, United States Magistrate Judge.

On March 6, 2023, Defendants Experian Information Solutions, Inc. and Trans Union, LLC (together, the “Defendants”) filed a motion to dismiss Plaintiff Erisa Moore’s (“Ms. Moore”) complaint, (ECF No. 13 (the “Motion”)), which has been referred to me for a report and recommendation. (ECF No. 16). On March 30, 2023, in apparent response to the Motion, Ms. Moore filed an amended complaint. (ECF No. 18 (the “PAC”); see ECF No. 17 (directing Ms. Moore to respond to the Motion)). The Court construes the PAC as a request for leave to amend the Complaint in response to the Motion. See Moorer v. U.S. Bank NA, No. 17 Civ. 56 (VAB), 2017 WL 11046240, at *1 (D. Conn. Aug. 9, 2017) (“As courts in this Circuit have noted, ‘[d]efendants should not be required to file a new motion to dismiss simply because an amended pleading was introduced while their motion was pending. If some of the defects raised in the original motion remain in the new pleading, the court simply may consider the motion as being addressed to the amended pleading. To hold otherwise would be to exalt form over substance.’”) (collecting cases); see also Cotto v. Fed. Nat’l Mortg. Ass’n, No. 20 Civ. 6487 (MKV), 2021 WL 4340668, at *4 (S.D.N.Y. Sept. 22, 2021) (“Where a plaintiff seeks to amend [her]

complaint while a motion to dismiss is pending, a court ‘may either deny the pending motion to dismiss as moot or consider the merits of the motion, analyzing the facts as alleged in the amended pleading.’”) (quoting Pettaway v. Nat’l Recovery Sols., LLC, 955 F.3d 299, 303 (2d Cir. 2020)) (alterations omitted); Lindell v. Mail Media Inc., 575 F. Supp. 3d 479, 484 (S.D.N.Y. 2021) (“If an amended complaint is filed pending a motion to dismiss, the Court ‘has the option of either denying the pending motion as moot or evaluating the motion in light of the facts alleged in the amended complaint.’”) (quoting Pettaway, 955 F.3d at 303–04)).

Accordingly, Defendants shall file their reply in support of the Motion by **Friday, April 14, 2023**. The Court will deem Defendants’ arguments in the Motion as directed to Ms. Moore’s allegations in the PAC, and will issue a report and recommendation in due course.

Dated: New York, New York
March 31, 2023

SO ORDERED.


SARAH L. CAVE
United States Magistrate Judge